

ORDERED.

Dated: January 18, 2022



Catherine Peek McEwen
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re:

Case No. 8:17-bk-00805-CPM

Christina M. Ostrowski,

Chapter 7

Debtor.

_____ /

ORDER DENYING MOTION TO REOPEN CASE

THIS CASE came on for consideration of the Debtor's Motion to Reopen Chapter 7 Case (the "Motion") (Doc. No. 13). The Motion asks the Court to reopen this case to permit the Debtor to file a reaffirmation agreement (the "Agreement") with Ocwen Loan Servicing ("Ocwen"), with respect to a mortgage loan on her homestead property located at 245 Plumosa Drive, Largo, Florida.¹ The docket in this case reflects that the Debtor received a discharge on May 9, 2017. Under 11 U.S.C. § 524(c)(1), a reaffirmation agreement is enforceable only if, among other things, the agreement was "made" prior to entry of the debtor's discharge. Thus, the Agreement need not have been *filed* prior to the Debtor's discharge date, provided it was *made* prior to that date.

¹ The Debtor's Schedule D (Doc. No. 1) identifies the last four digits of this loan account number as 5959.

In the context of Florida contract law, the term “made” has been interpreted as taking place when the parties have a “meeting of the minds.”² The Debtor’s Statement of Intentions (Doc. No. 1) filed with her bankruptcy petition indicates that she intended to reaffirm the mortgage loan with Ocwen secured by her homestead. However, no reaffirmation agreement with Ocwen was ever filed, and the Motion gives no indication if the parties, nevertheless, had a meeting of the minds as to an agreement between them prior to entry of the Debtor’s discharge. If, in fact, the parties had such a meeting of the minds, the Agreement may be deemed timely for purposes of § 524(c)(1) regardless of when it is filed.

However, because the Debtor is proceeding without the assistance of counsel, even if the Agreement is not time-barred, it would be invalid unless the Court conducts a hearing to confirm that the Debtor understands the consequences of the Agreement.³ This is true even though the Court neither approves nor disapproves the reaffirmation of debts secured by real property.⁴

Further, the Court notes that if the Debtor is seeking to refinance or modify her loan with Ocwen, Ocwen need not require a reaffirmation agreement for the Debtor to become liable for the entire amount owed under the new loan. The Court’s Administrative Order Granting Relief from Discharge Injunction to Enter into Agreement to Refinance or Modify Debt Secured by Lien on Homestead,⁵ expressly states that with respect to a debtor or former debtor (“Debtor”) who initiates a request to refinance or modify a debt secured by a lien on homestead property, “[i]f the Debtor enters into an agreement to refinance or to modify an existing debt secured by a lien on homestead property, the Debtor may become liable for the entire amount owed under the new (refinanced or

² See *In re LeBeau*, 247 B.R. 537, 540 (Bankr. M.D. Fla. 2000) (applying fundamental contract principles, a reaffirmation agreement is “made” when the parties to the agreement have a “meeting of the minds”).

³ See 11 U.S.C. § 524(c)(6), (d). See also *In re Pitts*, 462 B.R. 844, 848 (Bankr. M.D. Fla. 2012).

⁴ *Id.*

⁵ See Admin. Order FLMB-2015-9, a copy of which is attached,

modified) loan, notwithstanding the Debtor's having obtained a discharge of the debt owed under a prior agreement secured by a lien on the same property." Therefore, if the Debtor initiated a request to refinance or modify her mortgage loan with Ocwen, Ocwen should not refuse to enter into a new loan agreement based solely on her failure to execute a reaffirmation agreement.⁶

Accordingly, it is

ORDERED the Motion is denied without prejudice to file an amended motion that: (1) asserts, if true, that the parties had a meeting of minds with respect to the terms of the Agreement prior to May 9, 2017; and (2) requests a hearing so that the Court can explain to the Debtor the consequences of executing the Agreement. However, a reaffirmation agreement as to the Debtor's mortgage loan is unnecessary to ensure that the Debtor is liable for the entire amount owed under a refinanced or modified loan, unless it is Ocwen, and not the Debtor, who initiated the request to refinance or modify the loan.

The Clerk is directed to serve a copy of this order on the Debtor and on Ocwen Loan Servicing.

⁶ See *In re Autmon-Downing*, 2016 WL 4239711 (Bankr. M.D. Fla. Aug. 5, 2016).

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
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In re)
)
ADMINISTRATIVE ORDER GRANTING) Administrative Order
RELIEF FROM DISCHARGE) FLMB-2015-9
INJUNCTION TO REFINANCE OR)
MODIFY LIEN ON HOMESTEAD)
PROPERTY,)
)
_____)

**ADMINISTRATIVE ORDER GRANTING RELIEF FROM
DISCHARGE INJUNCTION TO ENTER INTO AGREEMENT
TO REFINANCE OR MODIFY DEBT SECURED BY LIEN ON HOMESTEAD**

When a debtor or former debtor (the “Debtor”) has received a discharge and later seeks to refinance or modify an unaffirmed debt secured by a lien on the Debtor’s homestead property, the Bankruptcy Court for the Middle District of Florida finds that a secured creditor should not require individual judicial relief before the Debtor can negotiate and enter into a refinance or modification agreement. Accordingly, it is

ORDERED:

1. This order applies *only* when *the Debtor* initiates a request to refinance or to modify the debt secured by a lien on homestead property. This order does not authorize unsolicited attempts by any creditor to renegotiate debt that was not reaffirmed prior to a Debtor’s discharge.
2. This order grants relief from the discharge injunction to a secured creditor for the purpose of negotiating and entering into a refinance or modification agreement with a Debtor.

3. If the Debtor enters into an agreement to refinance or to modify an existing debt secured by a lien on homestead property, the Debtor may become liable for the entire amount owed under the new (refinanced or modified) loan, notwithstanding the Debtor's having obtained a discharge of the debt owed under a prior agreement secured by a lien on the same property.

DATED: November 16, 2015.

A handwritten signature in black ink, appearing to read "MGWilliamson", is written above a horizontal line.

MICHAEL G. WILLIAMSON
Chief United States Bankruptcy Judge